

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Nehemiah Kong,

Plaintiff,

v.

Steven Gerschultz, in individual
and representative capacity as
trustee of the Gerschultz Family
Trust;
Christina Peng Gerschultz, in
individual and representative
capacity as trustee of the Gerschultz
Family Trust; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Nehemiah Kong complains of Steven Gerschultz, in individual and representative capacity as trustee of the Gerschultz Family Trust; Christina Peng Gerschultz, in individual and representative capacity as trustee of the Gerschultz Family Trust; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who suffers from Polio. He uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of his van.

2. Defendant Steven Gerschultz, in individual and representative capacity as trustee of the Gerschultz Family Trust, owned the real property located at or about 3620 Katella Avenue, Los Alamitos, California, in December 2018.

3. Defendant Christina Peng Gerschultz, in individual and representative capacity as trustee of the Gerschultz Family Trust, owned the real property located at or about 3620 Katella Avenue, Los Alamitos, California, in December 2018.

4. Defendant Steven Gerschultz, in individual and representative capacity as trustee of the Gerschultz Family Trust, owns the real property located at or about 3620 Katella Avenue, Los Alamitos, California, currently.

5. Defendant Christina Peng Gerschultz, in individual and representative capacity as trustee of the Gerschultz Family Trust, owns the real property located at or about 3620 Katella Avenue, Los Alamitos, California, currently.

6. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including Does 1 through 10, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and Does 1 through 10, inclusive, are ascertained.

JURISDICTION & VENUE:

7. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

8. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to the property in December 2018 to eat at Rustic Eats ("Restaurant") with the intention to avail himself of its goods or services, motivated in part to determine if the defendants comply with the disability access laws.

11. The Restaurant is a facility open to the public, a place of public accommodation, and a business establishment.

12. Parking spaces are one of the facilities, privileges, and advantages offered by Defendants to patrons of the Restaurant.

13. Even though there was a parking space marked and reserved for persons with disabilities directly in front of the Restaurant during Plaintiff's visit, the only van parking stall and access aisle were not level with each other because there was a built up curb ramp running into the access aisle.

14. This curb ramp caused slopes greater than 2.1%.

15. Currently, the parking stall and access aisle are not level with each other.

16. Defendants have failed to maintain in operable working condition those

1 features of facilities and equipment that are required to be readily accessible to
2 and usable by persons with disabilities at the Subject Property.

3 17. Plaintiff personally encountered this barrier.

4 18. This inaccessible facility denied the plaintiff full and equal access and
5 caused him difficulty.

6 19. The defendants have failed to maintain in working and useable
7 conditions those features required to provide ready access to persons with
8 disabilities.

9 20. The barriers identified above are easily removed without much
10 difficulty or expense. They are the types of barriers identified by the
11 Department of Justice as presumably readily achievable to remove and, in fact,
12 these barriers are readily achievable to remove. Moreover, there are numerous
13 alternative accommodations that could be made to provide a greater level of
14 access if complete removal were not achievable.

15 21. For example, there are numerous paint/stripe companies that will come
16 and stripe a level parking stall and access aisle and install proper signage on
17 rapid notice, with very modest expense, sometimes as low as \$300 in full
18 compliance with federal and state access standards.

19 22. Plaintiff will return to the Restaurant to avail himself of its goods or
20 services and to determine compliance with the disability access laws. He is
21 currently deterred from doing so because of his knowledge of the existing
22 barriers. If the barriers are not removed, the plaintiff will face unlawful and
23 discriminatory barriers again.

24 23. Given the obvious and blatant nature of the barriers and violations
25 alleged herein, the plaintiff alleges, on information and belief, that there are
26 other violations and barriers on the site that relate to his disability. Plaintiff will
27 amend the complaint, to provide proper notice regarding the scope of this
28 lawsuit, once he conducts a site inspection. However, please be on notice that

1 the plaintiff seeks to have all barriers related to his disability remedied. See
 2 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 3 encounters one barrier at a site, he can sue to have all barriers that relate to his
 4 disability removed regardless of whether he personally encountered them).

5
 6 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 7 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 8 Defendants.) (42 U.S.C. section 12101, et seq.)

9 24. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 10 again herein, the allegations contained in all prior paragraphs of this
 11 complaint.

12 25. Under the ADA, it is an act of discrimination to fail to ensure that the
 13 privileges, advantages, accommodations, facilities, goods and services of any
 14 place of public accommodation is offered on a full and equal basis by anyone
 15 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 16 § 12182(a). Discrimination is defined, inter alia, as follows:

- 17 a. A failure to make reasonable modifications in policies, practices,
 18 or procedures, when such modifications are necessary to afford
 19 goods, services, facilities, privileges, advantages, or
 20 accommodations to individuals with disabilities, unless the
 21 accommodation would work a fundamental alteration of those
 22 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 23 b. A failure to remove architectural barriers where such removal is
 24 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 25 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 26 Appendix "D."
- 27 c. A failure to make alterations in such a manner that, to the
 28 maximum extent feasible, the altered portions of the facility are

1 readily accessible to and usable by individuals with disabilities,
 2 including individuals who use wheelchairs or to ensure that, to the
 3 maximum extent feasible, the path of travel to the altered area and
 4 the bathrooms, telephones, and drinking fountains serving the
 5 altered area, are readily accessible to and usable by individuals
 6 with disabilities. 42 U.S.C. § 12183(a)(2).

7 26. Under the 2010 Standards, access aisles shall be at the same level as the
 8 parking spaces they serve. Changes in level are not permitted. 2010 Standards
 9 502.4. "Access aisle are required to be nearly level in all directions to provide
 10 a surface for wheelchair transfer to and from vehicles." 2010 Standards §
 11 502.4 Advisory. No more than a 1:48 slope is permitted. 2010 Standards §
 12 502.4.

13 27. Here, the failure to provide level van parking stall is a violation of the
 14 law.

15 28. The Safe Harbor provisions of the 2010 Standards are not applicable
 16 here because the conditions challenged in this lawsuit do not comply with the
 17 1991 Standards.

18 29. A public accommodation must maintain in operable working condition
 19 those features of its facilities and equipment that are required to be readily
 20 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

21 30. Here, the failure to ensure that the accessible facilities were available
 22 and ready to be used by the plaintiff is a violation of the law.

23
 24 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 25 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 26 Code § 51-53.)

27 31. Plaintiff repleads and incorporates by reference, as if fully set forth
 28 again herein, the allegations contained in all prior paragraphs of this

1 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
2 that persons with disabilities are entitled to full and equal accommodations,
3 advantages, facilities, privileges, or services in all business establishment of
4 every kind whatsoever within the jurisdiction of the State of California. Cal.
5 Civ. Code §51(b).

6 32. The Unruh Act provides that a violation of the ADA is a violation of the
7 Unruh Act. Cal. Civ. Code, § 51(f).

8 33. Defendants’ acts and omissions, as herein alleged, have violated the
9 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
10 rights to full and equal use of the accommodations, advantages, facilities,
11 privileges, or services offered.

12 34. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
13 discomfort or embarrassment for the plaintiff, the defendants are also each
14 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
15 (c).)

16
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this Court award damages and provide
19 relief as follows:

20 1. For injunctive relief, compelling Defendants to comply with the
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
22 plaintiff is not invoking section 55 of the California Civil Code and is not
23 seeking injunctive relief under the Disabled Persons Act at all.

24 2. Damages under the Unruh Civil Rights Act, which provides for actual
25 damages and a statutory minimum of \$4,000 for each offense.
26
27
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1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3
4 Dated: December 31, 2018 CENTER FOR DISABILITY ACCESS

5
6 

7 By: _____

8 Chris Carson, Esq.
9 Attorney for plaintiff